IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

MFA.No. 453 of 2002(E)

OPMV.332/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, WAYANAD
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APPELLANT: PETITIONER

C.S.UNNIKRISHNAN, S/O.LATE SANKARAN,
"VIGILIN NIVAS", AMBALAVAYAL P.O.,
AMBALAVAYAL AMSOM DESOM, SULTHN BATHERY TALUK.

BY ADV. SRI.LLOYD JOSEPH VIVERA
SRI.C.A.CHACKO

RESPONDENTS: RESPONDENTS
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1. N.J.MATHEW, S/O.JOHN,
THARIPPOYIL HOUSE, MARATHATT,
THOMATTUCHAL AMSOM DESOM, SULTHAN BATHERY,
NOW RESIDING AT NARIPPOYIL VEEDU,
PADICHUA POST, PULPALLU.
(DRIVER OF KRD-6103 JEEP)

2. SREEJITH K.V., S/O.UNNIKRISHNAN,
KUTTIYIL HOUSE, KUPPAKKOLLI, AMBALAVAYAL AMSOM
DESOM, SULTHAN BATHERY(DRIVER OF KLW-3496 JEEP)

3. K.SULOCHANA, D/O.RAMACHANDRA MENONM,
"ASWATHY", H.NO.4/272, AMBALAVAYAL,
SULTHAN BATHERY.(OWNER OF KRD-6103 JEEP)

4. V.P.MOIDEEN KUTTY,
S/O.SAIDALI, VATAPARAMBIL HOUSE,
AMBALAVAYAL AMSOM DESOM,
SULTHAN BATEHRY.(OWNER OF KLW 4396 JEEP)

5. UNITED INDIA INSURANCE COMPANY LTD.,
SULTHAN BATHERY.
(P.NO.100311/31/50/11/0046/94(KRD-6103 JEEP,
AND P.NO.100311/31/50/11/1021/94 KLW-3496-JEEP

BY ADVS. SRI.T.KURIAKOSE PETER --- R4
SRI.ABRAHAM P.GEORGE
SRI.MATHEWS JACOB -- R5
SRI.RAFFEEKH.K -- R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.453 OF 2002 ()

Dated this the 1st day of November, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant sustained injuries in a motor accident on 2.3.1995. He claimed a compensation of Rs.10 lakhs. Tribunal awarded only a compensation of Rs.1,10,000/- with interest. Only dispute is regarding the quantum of compensation.

Ext.A1 is the copy of the wound certificate. It shows the following injuries:

> (1) Sutured wound over index, middle and ring finger. (2) Traumatic amputation of distal part of right little finger. (3) Distal part of mid finger was bluish with doubtful viability. Fracture of base of distal phalanx of mid finger and amputation of distal phalanx of little finger. The flexor profundes tendon of ring finger was not acting."

He was an Instrument technician. According to him, inview of the amputation and injuries to the fingers he is unable to do the work as was done previously as Instrument technician. The medical certificate issued by the Orthopaedic specialist who was examined as PW2 is as follows:

> On admission he had the following injuries:
>
> - Sutured wounds over index, middle and ring finger.
>
> - Traumatic amputation of distal part of right little finger.
>
> - Distal part of mid finger was bluish with doubtful viability.
>
> The X-rays of the right hand showed fracture of base of distal phalanx of index finger, comminuted fracture of Distal phalanx of mid finger and amputation of Distal phalanx of little finger.
>
> The Flexor profundes tendon of ring finger was not acting.
>
> It was treated here by through debridement and resuturing of the wounds and other supportive measures. The flexor profendus tendon to ring finger was not repaired due to the poor vascular status of the fingers.
>
> He was discharged on 9.3.1995 with the advise to come for regular follow up in the O.P.department.

> Post operatively the wounds healed well and sutures removed. Now there is post traumatic stiffness of fingers. He is now undergoing physiotherapy for the same.
>
> He is an Instrumentation Technician by profession and for the time being he is having 100% disability."

This was issued on 17.6.1995 immediately after three months of the accident. Tribunal assessed compensation only for 20% disability. The compensation for permanent disability and loss of earning power can be awarded only for the permanent disability certificate. The disability certificate is only showing the disability at the time of examination, that is within a short period of the accident. Some of the injuries on the fingers can be cured only by the Physiotherapist. However, there is amputation of distal phalanx of little finger an certificate shows that some of the non movements of the rings cannot be repaired. Considering the fact that there was only one finger amputation and other two fingers were not amputated though fractured, we are of the opinion that 20% assumption also cannot be interfered in the absence of any certificates showing permanent disability.

2. He was an Instrumentation technician. According to him, he was working in a Construction Development Company at Doha earning Rs.30,000/-. To prove the same, he produced Ext.A3 photocopy of the passport. Ext.A4 series produced by the petitioner would show that he is an expert as Instrumentation technician and he is having about 23 years of working experience and he is also having knowledge of computer science. According to the petitioner, at the time of the accident, ie., on 2.3.1995, he was working in the Construction Development Company, Dohe and he came to his native place on leave. To prove the same, the petitioner has relied on as appointment letter, i.e., the last document in Ext.A4 series issued from the Construction Development Company, Dohe. As per which, he has been selected for the post of senior Instrument Technician in a Construction Development Company and he has to report in the Company at Dohe on 7th June 1994. A photostat copy of the certificate issued from the said Construction Development Company, Dohe dated 11.12.1994 which is there in Ext.A4 series would

show that the petitioner was employed with their organisation from 10th June, 1994 to 11th December, 1994 as a Senior Instrument Technician. Ext.A4 pass port shows that he was employed in Dohe later he was unable to go in time at the time of examination. He stated that he was trying for another job. The Insurance company has got a contention that the job he was having at Dohe was not permanent. But he has 23 years experience in Instrumentation Technology. Considering his nature of injury, his contention that he will not be able to do the work as technician as earlier has to be accepted. Considering the wages of an Instrumentation Technician having 23 years of experience and the fact that he was working in abroad earning higher wages, we are of the opinion that atleast Rs.6000/- ought have been taken as the monthly salary for the purpose of calculation of compensation. He is 47 years of old and 13 is the apt multiplier taking guidelines from the 2nd schedule. If that be so, compensation payable for his disability will be Rs.6,000 x 12 x 13 x $^{20}/_{100}$ = Rs.1,87200/-. Tribunal has awarded only Rs.93,600/-. Therefore he is entitled to an additional amount of Rs.93,600/- for disability and loss of

earning power. Tribunal has assessed Rs.6,000/- as the actual loss of earning for two months as he has claimed only for two months compensation for actual loss of earning. Since we have enhanced the monthly income at Rs.6,000/- he is entitled to another Rs.6,000/- more. Thus additional amount comes to Rs.99,600/-. The additional amount of Rs.99,600/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Since the accident occurred more than 10 years ago, on deposit of the amount he is allowed to withdraw the same. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.453 OF 2002 ()

J U D G M E N T

1st November, 2007